

Pending Claims

Claim Rejections 35-USC §101

The Examiner states that this rejection can be overcome by amending the claim 1 to recite, “the first portion is adapted to cover...,” and suggested that similar amendments be made for other claims.

Claim Rejections – 35 USC §102

The Examiner continues reject that claim 1 read on the prior art patent to Hand. However, in the original PCT in Japanese, PCT/JP00/08756, the original Japanese phrase corresponding to “the top of the bulge” in claim 1 is, 膨らみの頂点, which can be more correctly

translated into “the apex of the bulge” or “the highest point of the bulge.” It is attested here that I, Chris Mizumoto, attorney for Applicants, can read Japanese and that the above Japanese phrase is used in claim 1 of the original PCT and that a more correct translation of the phrase is “the apex of the bulge” or “the highest point of the bulge.” Claim 1 has been amended to incorporate the phrase, “the apex of the bulge” in place of “the top of the bulge.”

A person of ordinary skill in the art would have known and understood that the apex of the bulge is the summit or the highest point of the bulge and not the periphery of the bulge or above the bulge. The claims are given their broadest reasonable interpretation, but it would be unreasonable to construe the language of claim 1 to include a periphery of the bulge or a region above the bulge as shown by Hand because a person of ordinary skill in the art would not interpret “the apex of the bulge” as including such regions. Note that the term “apex” is provided in reference to the bulge of the buttock. The periphery region of the bulge would be the base of the bulge and not the apex of the bulge.

MPEP 2111 states that "PTO applies to verbiage of the proposed claims the broadest reasonable meaning of the words in their ordinary usage as they would be understood by one of ordinary skill in the art, taking into account whatever enlightenment by way of definitions or otherwise that may be afforded by the written description contained in applicant's specification." Therefore, the broadest reasonable interpretation of “the apex of the bulge” in ordinary usage as understood by a person of ordinary skill in the art would be the summit of the bulge and would not be the peripheral region of the bulge including any region above the bulge. The patent to Hand clearly shows the band running around the periphery of the bulge and not extending through the apex of the bulge as set forth in claim 1.

New Claim 42 having similar features as claim 1 is not anticipated by Hand for at least the same reasons as claim 1. In claim 42, the phrase, “the highest point of the bulge” is used. It is clear to a skilled person that the base or the periphery of the bulge, which is where Hand’s band is

disposed, is not the highest point of the bulge but the lowest point. A person of ordinary skill in the art would have understood the phrase to mean the apex or summit of the bulge.

Therefore, for at least the reasons set forth above, all claims are allowable over the cited prior art.

In view of the above amendment, applicant believes the pending application is in condition for allowance.

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Respectfully submitted,

By 

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